

~~IN THE UNITED STATES DISTRICT COURT~~  
FOR THE DISTRICT OF MARYLAND  
Greenbelt Division

DEC 8 2008

CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

WILLIS MARK HAYNES, pro se,  
  
Petitioner,

vs.

CASE NO. 83m 02-3850

UNITED STATES OF AMERICA,  
  
Respondent  
=====

PETITIONER'S MOTION FOR RELIEF FROM [DE#512] 07/26/2006 ORDER DENYING  
28 U.S.C. §2255 MOTION TO VACATE, PURSUANT TO RULE 60(b)(6), FED.R.CIV.P.  
=====

TO THE HONORABLE COURT:

COMES NOW, the Petitioner, Willis Mark Haynes, appearing this day pro se and without the aid of counsel, who hereby respectfully moves this Honorable Court for relief from operation of the Court's July 26, 2006 Order [DE#512] denying Petitioner Haynes' 28 U.S.C. §2255 Motion to Vacate, Set Aside, or Correct Sentence [DE#466], pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, in light of underlying clerical mistakes and other miscellaneous factors of excusable neglect and extraordinary circumstances resulting in the dismissal of Petitioner Haynes' appeal of the above-styled Order [DE#512] as untimely

Based on the complexity and uniqueness of the factors warranting Rule 60(b)(6) relief, Petitioner Haynes would outline the following circumstances and invoke the following citations of authority hereinafter, all standing for the proposition that Rule 60(b)(6) relief is necessary and warranted herein

STATEMENT OF THE CASE, FACTS, AND COURSE OF DISPOSITION

Page

Hay

mp

rn:

Ge:

rw:

lay

Hay

Ap:

RAN

Ce

Ap:

.sm:

Ce

Ap:

Ap

Th:

Ha:

Ex

Co

Mo

the extent of the defendant's liability

Page

Ap

in

ARGUMENT AND CITATIONS OF AUTHORITY IN SUPPORT

Ha

rv

mp

Compton

Klapprott v.

United States

Dowell v. State Farm Fire & Casualty Auto

Insurance Co.

Wh

Klapprott

Ackerman

~~Dowell, 993 F.2d at 48. As the law stands today, a court may grant a~~  
motion under Rule 60(b)(6) when the judgment was obtained by the improper  
conduct of the party in whose favor it was rendered or by an "excusable  
neglect", see United States v. Cato Bros., Inc., 273 F.2d 153, 157 (4th  
Cir. 1959), or in other "extraordinary circumstances". See, e.g.,  
Ackermann v. United States, 340 U.S. 193, 199, 95 L.Ed. 207, 71 S.Ct. 209  
(1950). Put simply, the applicable rule is as follows: a Rule 60(b)(6)  
motion will be granted only in extraordinary circumstances or under  
circumstances imposing extreme or undue hardship such as that sustained  
herein by Defendant Haynes. See United States v. Cirami, 563 F.2d 26, 32  
(2nd Cir. 1977); Allstate Ins. Co. v. Michigan Carpenters' Council Health  
& Welfare Fund, 760 F.Supp. 665, 669 (W.D. Mich. 1991)

Of interest to the case at hand in the matter, particular observation  
of the holding in Smith v. Barry, 502 U.S. 244, 116 L.Ed.2d 678, 112 S.Ct.  
678 (1992), wherein the Supreme Court held that courts will and shall  
liberally construe the requirements of Rule 3 of the Federal Rules of  
Appellate Procedure. See Torres v. Oakland Scavenger Co., 487 U.S. 312,  
317, 101 L.Ed.2d 285, 108 S.Ct. 2405. The government's argument that the  
district court clerk timely docketed Haynes' Petition for a Certificate  
of Appealability [DE#517], but not Haynes' Notice of Appeal is irrelevant  
in this matter, since it is the notice afforded by a document, not the  
litigant's motivation in filing it, that determines the document's  
sufficiency as a notice of appeal in any event. Therefore, the  
government's motion seeking to and prompting the Fourth Circuit's  
dismissal of Haynes' appeal on the basis that Haynes did not file a

~~notice of appeal in a timely manner (assuming arguendo that this Court~~  
finds that the paper-clipped notice of appeal, appended to Haynes' petition for a certificate of appealability was not properly filed), all due to clerical mistake on part of the district court clerk, must still fail, and warrants 60(b)(6) relief wherein the Petitioner for a Certificate of Appealability itself gave the Court, as this Court conceded, proper notice of Haynes' intent to appeal.

A petition for a certificate of appealability filed with a district court by a litigant seeking to appeal a district court decision is effective as a notice under Rule 3, Fed.R.App.P. --- which requires that a notice of appeal be filed within the time allowed by Rule 4 Fed.R.App.P., and that such a notice specify the party or parties taking the appeal, designate the judgment, order, or part thereof appealed from and name the court to which the appeal is taken --- if the petition is filed within the time allowed by Rule 4, Fed.R.App.P. and conveys the information required by Rule 3, Fed.R.App.P., because (1) when papers are technically at variance with the letter of Rule 3, Fed.R.App.P., a court may find that the litigant has complied with the Rule if the litigant's action is the functional equivalent of what the Rule requires; (2) the notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal; (3) the fact that the Federal Rules of Appellate Procedure envision that a notice of appeal and the appellant's petition will be separate filings does not preclude a court's treating a brief-styled filing as a notice of appeal, if the filing is timely under Rule 4, Fed.R.App.P., and conveys the

~~information required by Rule 3, Fed.R.App.P., since (a) such treatment is~~  
appropriate under Rule 3(c)'s provision that, an appeal shall not be  
dismissed for informality or form or title of the notice of appeal, and  
(b) proper briefing is not a jurisdictional requirement under the Federal  
Rules of Appellate Procedure. See Smith v. Barry, supra at HN1.

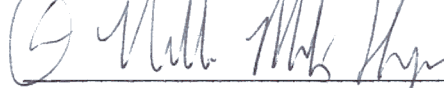
In conclusion, clearly Haynes' intent to pursue an appeal with the  
Fourth Circuit Court of Appeals was timely. The government's actions in  
having Haynes' appeal dismissed as untimely, although seemingly untimely  
from an outer-perspective, should serve as invitation and motivation for  
this Honorable Court to heretofore vacate its previous order and re-enter  
same, just as the Court attempted to do when it granted Haynes'  
previously-filed motion for an extension of time to appeal

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, for all of the foregoing reasons, clerical mistakes, and  
citation of authority, Petitioner Haynes prays this Honorable Court grant  
Haynes relief from [DE#512] the Court's July 26, 2006 Order denying  
Haynes' 28 U.S.C. §2255 Motion, and thereafter reinstate a new Order  
denying Haynes' 28 U.S.C. §2255 Motion, as a matter of law and in the  
interests of justice the same.

Dated: December 5, 2008

Respectfully & Humbly Submitted,

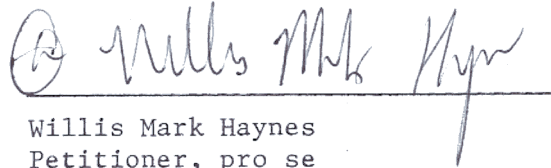


Willis Mark Haynes, Petitioner  
Register No.  
Federal Correctional Complex  
Post Office Box 1033  
Coleman, Florida 33521-1033

CERTIFICATE OF SERVICE

Page 7 of

I, Willis Mark Haynes, Petitioner of the foregoing Motion for Relief From Judgment, filed pursuant to Rule 60(b)(6), Fed.R.Civ.P., hereby certify that a true and correct copy of the foregoing was served upon the following interested persons, by United States Mail, postage prepaid and affixed thereto for sufficient delivery:

A handwritten signature in cursive script, appearing to read "Willis Mark Haynes", written over a horizontal line.

Willis Mark Haynes  
Petitioner, pro se